

Assembly Bill No. 325

Passed the Assembly September 8, 2011

Chief Clerk of the Assembly

Passed the Senate September 8, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 230.5 to the Labor Code, relating to employee rights.

LEGISLATIVE COUNSEL'S DIGEST

AB 325, Bonnie Lowenthal. Employee's right to bereavement leave.

Existing law provides employees with the right to take time off work without discharge or discrimination for a number of reasons.

This bill would prohibit an employer from refusing to grant a request by any employee to take up to 3 days of bereavement leave or to interfere with or restrain an employee from doing so. This bill would authorize an employee who has been discharged, disciplined, or discriminated against for exercising his or her right to bereavement leave to bring a civil action against his or her employer for reinstatement, specified damages, and attorney's fees. The provisions of the bill would not apply to an employee who is covered by a valid collective bargaining agreement that provides for bereavement leave and other specified working conditions.

The people of the State of California do enact as follows:

SECTION 1. Section 230.5 is added to the Labor Code, to read:

230.5. (a) It is unlawful employment practice for an employer to refuse to grant a request by any employee to take up to three days of bereavement leave upon the death of a spouse, child, parent, sibling, grandparent, grandchild, or domestic partner.

(b) It is an unlawful employment practice for an employer to interfere with or restrain the exercise or the attempted exercise of the right of an employee to take leave pursuant to subdivision (a).

(c) For purposes of this section, the following terms have the following meanings:

(1) "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, a child of a domestic partner, or a child of

a person standing in loco parentis. This definition of a child is applicable regardless of age or dependency status.

(2) “Employee” means a person employed by the employer for at least 60 days prior to the commencement of the leave.

(3) “Parent” has the same meaning as defined in paragraph (3) of subdivision (b) of Section 233.

(4) “Domestic partner” has the same meaning as defined in Section 297 of the Family Code, who is registered pursuant to Part 2 (commencing with Section 298) of Division 2.5 of the Family Code.

(5) “Sibling” means a person related to another person by blood, adoption, or affinity through a common legal or biological parent.

(d) The days of bereavement leave need not be consecutive.

(e) The bereavement leave must be completed within 3 months of the date of death of the person listed in subdivision (a).

(f) The bereavement leave shall be taken pursuant to any existing bereavement leave policy. If there is no existing bereavement leave policy, the bereavement leave is to be unpaid, except that an employee may use vacation, personal leave, or compensatory time off that is otherwise available to the employee.

(g) The employee, if requested by the employer, shall, within 30 days of the first day of the leave, provide documentation of the death of the person listed in subdivision (a). “Documentation” includes a death certificate, a published obituary, or written verification of death, burial, or memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or government agency.

(h) An employee who is discharged, disciplined, or otherwise discriminated against in terms or conditions of employment by his or her employer because the employee has exercised or attempted to exercise his or her right to bereavement leave pursuant to this section is entitled to reinstatement and to recover actual damages.

(i) (1) An employee who believes he or she has been discharged, disciplined, or in any way discriminated against in violation of this section may take either of the following actions:

(A) The employee may file a complaint with the Division of Labor Standards Enforcement in accordance with Section 98.7.

(B) The employee may bring a civil action for the remedies provided in subdivision (h) directly in a court of competent jurisdiction without exhausting any administrative remedies.

(2) In any action brought pursuant to this section, the court may, in accordance with case law governing attorney's fees awarded pursuant to subdivision (b) of Section 12965 of the Government Code, award to the prevailing party reasonable attorney's fees and costs, including expert witness fees, except where the action is filed by a public agency or a public official, acting in an official capacity.

(j) The rights and remedies of this section are cumulative, nonexclusive, and in addition to any other rights and remedies afforded by contract or other provisions of law.

(k) This section does not apply to an employee covered by a valid collective bargaining agreement if the agreement expressly provides for bereavement leave and the wages, hours of work, and working conditions of the employees, and if the agreement provides premium wage rates for all overtime hours worked, where applicable, and a regular hourly rate of pay for those employees of not less than 30 percent more than the state minimum wage.

Approved _____, 2011

Governor